

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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Applicant's or agent's file reference 35941-PCT	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/US04/26132	International filing date (day/month/year) 12 August 2004 (12.08.2004)	Priority date (day/month/year) 13 August 2003 (13.08.2003)	
International Patent Classification (IPC) or national classification and IPC IPC(7): F16F 9/38; F16L 57/00 and US Cl.: 188/322.12; 267/64.11; 118/505			
Applicant STABILUS, INC.			

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 3 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:

a. ☐ (sent to the applicant and to the International Bureau) a total of ___ sheets, as follows:

☐ sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).

☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.

b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

☒ Box No. I Basis of the report

☐ Box No. II Priority

☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

☐ Box No. IV Lack of unity of invention

☒ Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

☐ Box No. VI Certain documents cited

☐ Box No. VII Certain defects in the international application

☐ Box No. VIII Certain observations on the international application

Date of submission of the demand

01 March 2005 (01.03.2005)

Date of completion of this report

08 November 2005 (08.11.2005)

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Form PCT/IPEA/409 (cover sheet)(April 2005)

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Box No. 1 Basis of the report

1. With regard to the language, this report is based on:

- ☐ the international application in the language in which it was filed.
- ☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4(a))
- ☐ international preliminary examination (under Rules 55.2(a) and/or 55.3(a))

2. With regard to the elements of the international application, this report is based on (*réplacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

- ☒ the international application as originally filed/furnished
- ☒ the description:
pages 1-4 as originally filed/furnished
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☒ the claims:
pages 5 and 6 as originally filed/furnished
pages* NONE as amended (together with any statement) under Article 19
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☒ the drawings:
pages 1/2-2/2 as originally filed/furnished
pages* NONE received by this Authority on _____
pages* NONE received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to the sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to the sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

Form PCT/IPEA/409 (Box No. 1) (April 2005)

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/US04/26132**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims <u>1-8</u>	YES
	Claims <u>NONE</u>	NO
Inventive Step (IS)	Claims <u>5-8</u>	YES
	Claims <u>1-4</u>	NO
Industrial Applicability (IA)	Claims <u>1-8</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and Explanations (Rule 70.7)

Claims 1 and 4 lack an inventive step under PCT Article 33(3) as being obvious over US 4,591,137 to Steinberg in view of US 3,850,141 to Schmitt and in view of US 3,042,796 to De Forest. Steinberg teaches a gas spring for permanent installation on a vehicle, comprising: a gas spring with a piston rod and end fittings 2' and 3'; a removable protective sleeve encloses the gas spring. However, Steinberg fails to teach the protective sleeve closed at each end and covering the entire gas spring including the end fittings.

Schmitt teaches a protective sleeve cover a cylinder, the sleeve is closed at each end to protect against the entry of paint during a painting process. Schmitt further teaches the use of twist ties for closing the ends. It would have been obvious to one of ordinary skill in the art to have closed each end of the sleeve of Steinberg as taught by Schmitt, thus preventing paint from entering the sleeve.

Steinberg as modified by Schmitt fail to teach the sleeve covering the entire structure including the end fittings. De Forest teaches a structure covered in its entirety to prevent the entry of fluid. It would have been obvious to one of ordinary skill in the art to have covered the structure of Steinberg as taught by De Forest, thus preventing any paint from being applied to the end fittings maintaining a clean appearance.

Claims 2 and 3 lack an inventive step under PCT Article 33(3) as being obvious over the prior art as applied in the immediately preceding paragraph and further in view of US 6,334,711 to Risgalla et al. Schmitt teaches the protective sleeve made from polyethylene. Risgalla et al. teach the equivalence of polyethylene with polypropylene and polyamide when manufacturing protective sleeves. It would have been obvious to one of ordinary skill in the art to have provided the apparatus of Steinberg as modified by Schmitt with a protective sleeve made from either polypropylene or polyamide as taught by Risgalla et al., the choice of which is considered an engineering decision, wherein each material is considered a functional equivalence.

Claims 5-8 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the method steps of enclosing the gas spring in its entirety and installing the gas spring enclosed in the removable protective sleeve in the vehicle.

----- NEW CITATIONS -----